

Lead & Copper Rule Primacy Extension Waiver Frequently Asked Questions

This document provides guidance to EPA Regions and State partners exercising public water system primary enforcement responsibility, or “primacy,” under the Safe Drinking Water Act (SDWA). It also contains EPA’s current policy recommendations for complying with the 2024 Lead & Copper Rule Improvements (LCRI) as well as statutory and regulatory primacy requirements.

Disclaimer: The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document is not a regulation itself, nor does it change or substitute for those provisions and regulations. Thus, it does not impose legally binding requirements on EPA, States, or public water systems. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.

How do primacy extension agreements affect national primary drinking water regulation (NPDWR) enforcement and waiver provisions?

During the time that a primacy extension agreement is in effect for a new or revised NPDWR, EPA has primary enforcement authority for the new or revised rule in that State. States¹ with primacy extensions should assist EPA in developing the technical aspects of enforcement actions and conducting informal follow-up on violations (e.g., letters), and EPA will issue formal enforcement.² The LCRI provides conditions under which States may approve waivers to new requirements for school and child care facility sampling³ and for non-lead service line validation.⁴ Similar to enforcement actions, States with primacy extensions should assist EPA in developing the technical aspects of these waiver determinations. However, EPA will need to issue formal approval. EPA’s primacy extension guidance⁵ recommends that the State and EPA region agree on who conducts workload activities associated with LCRI waivers.

What are EPA’s expectations for school and child care facility sampling waivers under primacy extension agreements?

The first program year when community water systems (CWSs) must sample at least 20 percent of the elementary schools and child care facilities they serve is November 1, 2027 – October 31, 2028. Primacy extension agreements may be in place until October 30, 2028 (4 years from promulgation of LCRI). Under the rule, CWSs may be eligible for sampling waivers during the first five years after November 1, 2027 (the LCRI compliance date) if schools and child care facilities were sampled for lead

¹ “State” means one of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an eligible Indian Tribe. See 40 CFR 142.2 “State”.

² 40 CFR 142.12(b)(3)(iii)

³ 40 CFR 141.92(h)

⁴ 40 CFR 141.84(b)(5)(vi)

⁵ <https://www.epa.gov/dwreginfo/lead-and-copper-rule-implementation-tools>

between January 1, 2021 and November 1, 2027, and meet additional requirements provided in the regulations.⁶

Where an LCRI primacy extension agreement is in effect, any potential sampling waiver in that State must be formally issued by EPA until the State obtains interim or final primacy approval for LCRI. EPA, therefore, anticipates only needing to issue waivers for the first sampling program year as States should have primacy after that time period.

EPA expects States will conduct the workload activities associated with these waivers under primacy extension agreements to support EPA's formal approvals. These State activities could include information gathering from the water systems, establishing a procedure for assessing whether an existing State or local program or law meets the waiver requirements in 40 CFR 141.92(h), and providing EPA regions with an initial recommendation on the requested waiver. EPA is developing a checklist that States may use to assist them with their evaluation of these waivers.

What are EPA's expectations for Non-Lead Service Line Validation Study Waivers under primacy extension agreements?

Water systems may request, in writing, that the State approve a waiver of the inventory validation requirements described in 40 CFR 141.84(b). This request must be made by the compliance date, November 1, 2027. There is no deadline for when States must provide written approval, but States must describe how they will make these waiver determinations in their LCRI primacy application.⁷

The water system deadline for non-lead service line validation studies is generally October 31, 2034⁸, with State discretion for shortened or deferred deadlines for systems conducting mandatory service line replacement⁹. EPA expects that States will obtain interim or final primacy by October 30, 2028, well before these deadlines to approve any non-lead validation waivers submitted by water systems. Therefore, while a State's LCRI primacy extension agreement is in effect, EPA does not plan on approving non-lead validation study waiver requests from water systems in that State. To be responsive to water system non-lead validation waiver requests, EPA urges States to review these requests to make approval determinations as soon as possible once States do obtain final primacy approval from EPA.

⁶ 40 CFR 141.92(h)(5)

⁷ 40 CFR 142.16(d)(5)(ii)

⁸ 40 CFR 141.84(b)(5)(iv)

⁹ For more information on deadlines and other information on non-lead validation, see EPA's technical fact sheet: https://www.epa.gov/system/files/documents/2024-10/final_lcri_fact-sheet_validation.pdf.